

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:

Graciela Garcia and Pedro Garcia

Debtors.

Case No 18-05801

Judge Carol A. Doyle

Chapter 13

Trustee- Tom Vaughn

**NOTICE OF OBJECTION TO CLAIM OF
PORTFOLIO RECOVERY ASSOCIATES, LLC (CLAIM # 1)**

TO: Portfolio Recovery Associates, LLC
c/o Illinois Corporation Service C, registered
agent
801 Adlai Stevenson Drive
Springfield, IL 62703

Portfolio Recovery Associates, LLC
PO Box 41067
Norfolk, VA 23541

Zachary C. Hayes
Bankruptcy Representative
PRA Receivables Management, LLC
PO Box 41067
Norfolk, VA 23541

Trustee – Tom Vaughn*

Debtors, Graciela Garcia and Pedro Garcia, have filed an objection to the Claim filed by Portfolio Recovery Associates, LLC (Claim # 1) in her case.

Your claim may be reduced, modified or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

*If you do not want the court to eliminate or change your claim, you or your lawyer **must**:*

EITHER

Attend the hearing scheduled to be held on Tuesday, April 10, 2018 at 9:30 a.m. in Courtroom 742, United States Bankruptcy Court, 219 S. Dearborn St., Chicago, IL, 60604.

OR

on or before, April 9, 2018, file with the court a written response explaining your position at:

Clerk, U.S. Bankruptcy Court
Room 710
219 S. Dearborn Street
Chicago, IL 60604

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before April 9, 2018.

If you choose to respond in writing, and are not authorized to file electronically, you must also mail or otherwise serve a copy according to the Bankruptcy Rules and Local Rules to:

Susana Heredia
LAF
120 S. LaSalle St., Ste. 900
Chicago, IL 60603

and to everyone else who is listed as receiving a copy of this notice.

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim, and change or modify your claim as requested by the debtor.

/s/ Susana Heredia
Susana Heredia

Susana Heredia
Attorney for Debtors
ARDC ID# 6316564
LAF
120 S. LaSalle St, Suite 900
Chicago, IL 60603
Phone: 312/229-6339

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice and the attached Objection, by mailing a copy to the person(s) listed above on this the 8th day of March, 2017, except as to persons indicated by an asterisk (*), who are registrants with the Court's CM/ECF system and have, pursuant to Fed. R. Bankr. P. 7005 and 9036, and §II.B.2 of the Court's Administrative Procedures waived the right to receive notice by first class mail and consented to receive notice electronically, and waived the right to service by personal service or first class mail and consented to receive electronic service.

/s/ Susana Heredia
Susana Heredia

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**OBJECTION TO CLAIM OF
PORTFOLIO RECOVERY ASSOCIATES, LLC (CLAIM # 1)**

Debtors, Graciela Garcia and Pedro Garcia, pursuant to Federal Rules of Bankruptcy Procedure 3007 and 9014, hereby objects to the claim filed by Portfolio Recovery Associates, LLC (Claim # 1) and moves that this Court disallow the claim. In support of her objection, debtor states as follows:

1. On February 28, 2018, the Debtors filed this Chapter 13 bankruptcy case.
2. On March 8, 2018, Portfolio Recovery Associates, LLC filed a proof of claim (the "Claim") in the amount of \$488.87. The Claim identifies the original creditor as Sears and asserts that claimant acquired the Claim from CitiBank, N.A.. A copy of the Claim is attached as Exhibit "A" and incorporated by reference.
3. The only attachments to the Claim are an account summary from PRA Receivables Management, LLC, a limited power of attorney from Portfolio Recovery Associates, LLC to PRA Receivables Management, LLC, and a one page Bill of Sale and Assignment without exhibits.
4. The account summary identifies the debt type as a "credit card" alleged to have been opened on April 4, 2001.

5. The account summary lists the charge off date as May 15, 2011 and the last payment date as October 11, 2010.

6. If this Claim is based on a written contract, the written contract must be attached pursuant to Federal Rule of Bankruptcy Procedure 3001(c)(1). No written contract is attached to this Claim. *See* Ex. A.

7. In Illinois, a claim for breach of a written contract has a ten year statute of limitations. 735 ILCS 5/13-206.

8. In Illinois, collection on an oral contract is subject to a five-year statute of limitations from the date of default. 735 ILCS 5/13-205; *see also Portfolio Acquisitions, L.L.C. v. Feltman*, 909 N.E.2d 876, 880–84 (Ill. App. Ct. 2009) (cause of action based on a credit card is an unwritten contract subject to the five year statute of limitations).

9. In Illinois, a debt collector cannot legally sue to enforce an oral contract more than five years after the date of default.

10. In Illinois, a debt collector cannot legally file a proof of claim in bankruptcy asserting a debt owed on an oral contract which is more than five years in default.

11. Pursuant to 11 U.S.C. § 502(b)(1), a claim that is unenforceable under applicable law, which in this case is Illinois law, should not be allowed.

12. As the last payment date reflected on the proof of claim is more than seven years ago, the statute of limitations has passed for any claim for breach of an oral contract. Any claim held by Portfolio Recovery Associates, LLC pursuant to the account described in the proof of claim is unenforceable under Illinois law. Therefore, Claim #1 of Portfolio Recovery Associates, LLC should be disallowed in its entirety.

WHEREFORE. Debtors pray that the Court:

- a. Disallow Claim #1 of Portfolio Recovery Associates, LLC;
- b. Grant such other, further and different relief as may be just and proper

Respectfully submitted,

/s/ Susana Heredia
Susana Heredia

Susana Heredia
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